

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERRI L. PEEPLES and U.S. POSTAL SERVICE,
POST OFFICE, CENTRAL FORWARDING SYSTEM,
Phoenix, Ariz.

*Docket No. 96-1142; Submitted on the Record;
Issued May 6, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

The Board has duly reviewed the case on appeal and finds that it is not in posture for decision.

Appellant filed a claim on January 5, 1993 alleging she developed an emotional condition, due to factors of her federal employment. The Office of Workers' Compensation Programs denied appellant's claim on November 28, 1995 finding that appellant had not submitted sufficient medical evidence to establish that her emotional condition was due to accepted factors of her employment.¹

To establish appellant's occupational disease claim that she has sustained an emotional condition in the performance of duty appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.² Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of, whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and

¹ This case was previously on appeal before the Board. In its September 5, 1995 decision, the Board remanded the case for the Office to consider new factors appellant implicated in her claim for an occupational disease. The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. Docket No. 93-2214.

² Donna Faye Cardwell, 41 ECAB 730, 741-42 (1990).

medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship, between the diagnosed condition and the specific employment factors identified by the claimant.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.⁴

Appellant attributed her emotional condition to her 1988 position as supervisor of the flat sorter operation. She stated she supervised new employees, trained an S.T.S. candidate without adequate training for this assignment and worked during breaks and unwanted overtime. Appellant alleged in 1989 her fellow supervisor left and she ran the operation alone. Appellant stated she was required to train an acting supervisor as well as run the operation.

The employing establishment disputed appellant's allegations. Appellant's supervisor at that time, Mario De Cristoforo stated that appellant did not train an S.T.S. candidate, that Homer Mathews was responsible for all FSM operations when appellant's co-supervisor, Yolanda Stenson was detailed away. The general supervisor, Hiram Johnson, stated that appellant did not train any employees or complete evaluations. Appellant's coworkers and supervisors noted that appellant spent a great deal of time on the telephone and away from her work area.

Although these allegations pertain to appellant's regular or specially-assigned duties, the employing establishment has disputed appellant's allegations and appellant has not submitted any additional supporting evidence. Therefore, the Board finds that appellant failed to establish the above incidents as factors of her federal employment.

In 1990 appellant was transferred to Computerized Forwarding System (CFS) as a part of a settlement. Appellant alleged that she received only on-the-job training and received no offers of formal training prior to March 1991, at which point she was notified to attend a training class without adequate time to schedule child care. Appellant's supervisor from February 26, 1990 to June 3, 1991, John Trott, responded and stated appellant received three weeks training when she reported to CFS. He stated that appellant's decision to begin supervising on March 19, 1990 was within her discretion. Mr. Trott further stated that it was not unusual to have on-the-job training prior to formal training. He stated that appellant was given adequate notice and that her inability to attend the training session was not a problem.

³ *Id.*

⁴ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

The Board has held that actions of the employing establishment in matters involving training are generally not considered compensable factors of employment, because they relate to administrative or personnel matters. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁵ There is no indication that the employing establishment acted unreasonably regarding appellant's training.

Appellant alleged that she did not receive a 90-day rating as expected. Mr. Trott stated that appellant received a 30-day evaluation on March 27, 1990 and that she did not want further evaluations, but instead requested verbal feedback. He provided documentation of appellant's 30-day evaluation, as well as memoranda of meetings on February 27 and March 14, 1990. Assessment of performance is a supervisory responsibility which, while generally related to the employment, is an administrative function of the employer and not a duty of the employee.⁶ Appellant has submitted no evidence that Mr. Trott committed error or abuse in the assessment of her performance.

Appellant received a March 28, 1991 proposed reduction-in-grade and did not receive a final decision within 30 days. These allegations related to administrative or personnel matters of the employing establishment rather than the regular or specially-assigned duties of appellant.⁷ Appellant has submitted no evidence establishing error or abuse in her demotion and this does not constitute a factor of employment.

Appellant attributed her emotional condition to harassment by her supervisor, Mr. Trott, regarding events which occurred in May 1991. The Office did not reopen its decision regarding these events and the Board will not consider them on appeal.⁸

Appellant stated that she learned that Pati Finn, her fellow supervisor, felt "dumped on" due to appellant's transfer into the section. Ms. Finn acknowledged that she advised appellant that she felt "dumped on" as appellant did not appear to do the work required of her in her previous job. For harassment or discrimination to give rise to a compensable disability under the Federal Employees' Compensation Act, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her

⁵ *Martha L. Watson*, 46 ECAB 407 (1995).

⁶ *Barbara J. Nicholson*, 45 ECAB 803, 809 (1994).

⁷ *James W. Griffin*, 45 ECAB 774, 778 (1994).

⁸ *See* 20 C.F.R. § 501.3(d)(2).

allegations with probative and reliable evidence.⁹ The Board finds that Ms. Finn's acknowledgment that she felt "dumped on," does not rise to the level of constituting a compensable factor of employment and does not constitute verbal abuse.¹⁰

Appellant attributed her emotional condition to conducting a quality control inspection. Mr. Trott stated that appellant had been working three months prior to the quality control inspection and that appellant did not indicate any discomfort or concern regarding this inspection. Appellant alleged that she was given four new employee's to supervise. Mr. Trott stated that the systems was such that appellant's lack of training would not impact the new employee's training. Mr. Trott acknowledged that appellant was required to serve three employee's with rating, two of which were to be terminated and that these ratings were prepared by another supervisor. These allegations relate specifically to appellant's regular or specially-assigned duties and the employing establishment has confirmed that the events occurred as alleged.

As appellant has alleged compensable factors of employment the issue then becomes has she submitted sufficient medical evidence to establish that these factors resulted in her emotional condition. In support of her claim, appellant submitted a report dated February 4, 1993, from Dr. Richard F. Wurtz, a clinical psychologist. Dr. Wurtz diagnosed generalized anxiety disorder, depression, somatization disorder, acute stress disorder and post-traumatic stress disorder. He attributed appellant's condition to criticism of her supervisory skills, her daily job duties, responsibilities over other employees and the pressures of attempting to meet quality and quantity standards.

Although this report is not sufficient to meet appellant's burden of proof as Dr. Wurtz did not provide medical rationale supporting his opinion of a causal relationship between appellant's diagnosed condition and accepted employment factors, the report offers a history of injury, diagnosis and an opinion that appellant's condition was caused by the accepted employment incidents. While the report is not sufficient to meet appellant's burden of proof, it does raise an uncontroverted inference of causal relation between appellant's accepted employment incidents and her diagnosed condition and is sufficient to require the Office to undertake further development of appellant's claim.¹¹

On remand the Office should develop a statement of accepted facts including the compensable factors of employment and refer appellant to a Board-certified specialist for a well-rationalized report discussing the causal relationship if any between the accepted employment factors and appellant's emotional condition.

⁹ *Alice M. Washington*, 46 ECAB 382 (1994).

¹⁰ *See Tanya A. Gaines*, 44 ECAB 923 (1993); *Mildred D. Thomas*, 42 ECAB 888 (1991).

¹¹ *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

The November 28, 1995 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, D.C.
May 6, 1998

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member